

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ALEXANDER BALLY and ERIC R. COLBURN

Appeal No. 2001-1198
Application No. 09/233,899

ON BRIEF

Before STAAB, NASE, and BAHR, Administrative Patent Judges.
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection (Paper No. 6, mailed July 27, 2000) of claims 1 to 5, 7 to 15, 19 and 20. The other claims pending in this application (i.e., claims 6, 16 to 18 and 21 to 33) are not under rejection since the obviousness-type double patenting rejection made in the final rejection was withdrawn by the examiner in the Office letter of October 24, 2000 (Paper No. 11).

We REVERSE.

BACKGROUND

The appellants' invention relates to self-adjusting pliers. A copy of the claims under appeal is set forth in the appendix to the appellants' brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Edwards 1924	1,508,510	Sept. 16,
Wright 1938	2,112,873	April 5,
Miller 1959	2,906,155	Sept. 29,
Chow 26, 1997	5,660,089	Aug.

Claims 1 to 4 and 20 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Chow.

Claims 1 to 5, 7 to 13 and 19 stand rejected under 35 U.S.C. § 103 as being unpatentable over Miller in view of Wright.

Claims 14 and 15 stand rejected under 35 U.S.C. § 103 as being unpatentable over Chow in view of Edwards.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the answer (Paper No. 13, mailed January 2, 2001) for the examiner's complete reasoning in support of the rejections, and to the brief (Paper No. 12, filed November 6, 2000) and reply brief (Paper No. 14, filed March 1, 2001) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations which follow.

The anticipation rejection

We will not sustain the rejection of claims 1 to 4 and 20 under 35 U.S.C. § 102(e) as being anticipated by Chow.

To support a rejection of a claim under 35 U.S.C. § 102(b), it must be shown that each element of the claim is found, either expressly described or under principles of inherency, in a single prior art reference. See Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

Claim 1, the only independent claim on appeal, reads as follows:

Self-adjusting pliers for grasping a workpiece comprising:

first and second plier members each including a handle portion, a jaw portion, and an intermediate portion therebetween;

first pivot means on said intermediate portions permitting said jaw portions to converge on the workpiece and grasp the workpiece in response to initial movement of said handle portions toward each other;

second pivot means on said intermediate portions permitting a further grasping force to be applied to the workpiece in response to continued movement of said handle portions toward each other;

said second pivot means including a pawl member pivotally secured by a pawl pivot pin to said intermediate portion of said first plier member and a generally arcuate rack formed on said intermediate

portion of said second plier member, said generally arcuate rack having a plurality of first teeth and said pawl member having a plurality of second teeth formed on a first side thereof adjacent said generally arcuate rack, said plurality of second teeth in engagement with said plurality of first teeth of said generally arcuate rack during the continued movement of said handle portions toward each other to apply the further grasping force to the workpiece;

said second pivot means including spring means secured to said intermediate portion of said first plier member for urging said pawl member into a generally concentric relationship with said generally arcuate rack during the initial movement of said handle portions toward each other to grasp the workpiece and for urging said plurality of second teeth of said pawl member into engagement with said plurality of first teeth of said generally arcuate rack during the continued movement of said handle portions toward each other to apply the further grasping force to the workpiece;

said second pivot means being closer to said jaw portions than are said first pivot means; and

biasing means for biasing said handle portions away from each other and said jaw portions away from each other.

The appellants argue (brief, pp. 4-6; reply brief, pp. 2-3) that Chow lacks (1) a generally arcuate rack formed on the intermediate portion of the second plier member as recited in claim 1 and (2) a spring means secured to the intermediate portion of the first plier member for urging the plurality of second teeth of the pawl member into engagement with the plurality of first teeth of the generally arcuate rack as

recited in claim 1. We agree. It is our view that the examiner's position (answer, pp. 3 and 6) that the racks 302, 312 of Chow as shown in the drawings are generally arcuate¹ is without merit since those racks are not described as being generally arcuate or curved and are not shown as being generally arcuate or curved.² Additionally, the examiner's position (answer, pp. 3-4 and 6) that the springs 452, 462 of Chow are readable on the claimed spring means is without merit since those springs act to urge the pawl teeth away from the racks³ rather than towards the rack as required by claim 1.

Since all the limitations of claim 1 are not disclosed in Chow for the reasons set forth above, the decision of the examiner to reject claim 1, and claims 2 to 4 and 20 dependent thereon, under 35 U.S.C. § 102(e) is reversed.

¹ The American Heritage Dictionary, Second College Edition, (1982) defines "arcuate" as "having the form of a bow; curved."

² If anything those racks are shown as being linear.

³ See columns 3-4 of Chow.

The obviousness rejection of claims 14 and 15

We have reviewed the reference to Edwards additionally applied in the 35 U.S.C. § 103 rejection of claims 14 and 15 but find nothing therein which makes up for the deficiencies of Chow discussed above. Accordingly, we cannot sustain the examiner's rejection of appealed claims 14 and 15 under 35 U.S.C. § 103.

The obviousness rejection of claims 1 to 5, 7 to 13 and 19

We will not sustain the rejection of claims 1 to 5, 7 to 13 and 19 under 35 U.S.C. § 103 as being unpatentable over Miller in view of Wright.

In this rejection, the examiner ascertained (answer, p. 4) that Miller's pliers/tool shown in Figures 6-9 taught all the subject matter of claim 1 except for (1) a spring means secured to said intermediate portion of the first plier member for urging the pawl member into a generally concentric relationship with the generally arcuate rack during the initial movement of the handle portions toward each other to grasp the workpiece and for urging the plurality of second

teeth of the pawl member into engagement with the plurality of first teeth of the generally arcuate rack during the continued movement of the handle portions toward each other to apply the further grasping force to the workpiece; and (2) a biasing means for biasing the handle portions away from each other and the jaw portions away from each other. The examiner then determined (answer, pp. 4-5) that from the teachings of Wright it would have been obvious at the time the invention was made to a person of ordinary skill in the art to have provided Miller's pliers with spring means and biasing means performing the functions set forth in claim 1.

The appellants argue that the applied prior art (i.e., Miller and Wright) does not suggest the claimed subject matter. We agree. In that regard, while Wright may have been suggestive of adding a biasing means for biasing the handle portions of Miller's pliers away from each other and the jaw portions away from each other, it is our opinion that Wright is not suggestive of providing Miller with a spring means as recited in claim 1 especially since Miller's pawl member (i.e., pivot part 25a) is biased by spring wire 23a away from

the arcuate series of teeth 28a (i.e., the arcuate rack). In our view, the only suggestion for modifying Miller to provide a spring means as recited in claim 1 stems from hindsight knowledge derived from the appellants' own disclosure. The use of such hindsight knowledge to support an obviousness rejection under 35 U.S.C. § 103 is, of course, impermissible. See, for example, W. L. Gore and Assocs., Inc. v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

Since all the limitations of claim 1 are not suggested by the combined teachings of Miller and Wright for the reasons set forth above, the decision of the examiner to reject claim 1, and claims 2 to 5, 7 to 13 and 19 dependent thereon, under 35 U.S.C. § 103 is reversed.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1 to 4 and 20 under 35 U.S.C. § 102(e) is reversed and the decision of the examiner to reject claims 1 to 5, 7 to 15 and 19 under 35 U.S.C. § 103 is reversed.

REVERSED

LAWRENCE J. STAAB)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
JEFFREY V. NASE)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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JENNIFER D. BAHR)	
Administrative Patent Judge)	

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